



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/739,622	10/29/96	KALEND	A 127442

B5M1/0912

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EXAMINER

BRUCE, D

ART UNIT

PAPER NUMBER

2506

DATE MAILED:

09/12/97

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 08/739,622	Applicant(s) Kalend et al.
	Examiner David Bruce	Group Art Unit 2506

Responsive to communication(s) filed on _____.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-28 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) 1-20 and 26-28 is/are allowed.

Claim(s) 21 is/are rejected.

Claim(s) 22-25 is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Sturm *et al.* Sturm *et al.* shows all of the features of the instant invention including apparatus for matching digitized portal images and tracking movement (column 3 lines 1-25).

Allowable Subject Matter

3. Claims 1-20 and 26-28 are allowed.
4. Claims 22-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. The following is a statement of reasons for the indication of allowable subject matter:
claims 1-20 address the output of matched DPIS (an image created during x-ray radiation therapy) and DSIS (the therapy simulation image), claims 22-25 address robust motion flow for tracking movement of portal images, and claims 26-28 address the output of matched x-ray and

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reference images without input of physical dimensions. These features are neither shown nor fairly suggested in the prior art.

6. Papers related to Art Unit 2506 applications **only** may be submitted to Art Unit 2506 by facsimile transmission. Any transmission not to be considered an official response must be clearly marked "DRAFT". The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Art Unit 2506 Fax Center number is (703) 308-7723.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David V. Bruce whose telephone number is (703) 308-0856.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.



dvb/September 8, 1997



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PRIMARY EXAMINER
GROUP 2500